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No. 757

In the

Supreme Court of the United States

OCTOBER TERM, 1967.

LYLE A. DE SPAIN, et al., etc.,

Respondents,

vs.

DE KALB COUNTY COMMUNITY SCHOOL DISTRICT 428, et al., etc.,

Petitioners.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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This matter arises out of the opinion of the U.S. Court of Appeals for the 7th Circuit as reproduced in Petitioners' Petition, which reversed the decision of the U.S. District Court for the Northern District of Illinois as reported at 255 F.Supp. 255.

QUESTION PRESENTED

The question involved herein is whether this Court should issue the Writ of Certiorari to review a determination by the U.S. Court of Appeals for the 7th Circuit that the verse at issue was a prayer, and that its required recitation by school children in a public school should be enjoined as a violation of the First Amendment to the Constitution of the United States.

STATEMENT OF THE CASE

Petitioners' statement of the case at issue is inaccurate in that it omits a great deal of the factual basis on which the Court of Appeals predicated its decision. Since an extended review of the evidence presented in the District Court is inappropriate at this time, it should suffice to say that the following glaring omissions may be found in Petitioners' Statement of the Case:

1. Until 1964, when Mr. and Mrs. DeSpain complained to the Superintendent of Schools of DeKalb County, the verse in question contained, in the last line thereof, the phrase "We thank you, God, for everything" (A. 124). After Mr. and Mrs. DeSpain made their complaint, the word "God" was removed from the last line (A. 124).

2. Mrs. Watne (the school teacher who required the recitation of the verse at issue) testified that the use, purpose and effect of the verse at issue, and of the verse containing the direct thanks to "God" were identical (A. 126, 127).

3. The admitted purpose of Mrs. Watne in requiring the recitation of the verse at issue, was to teach the children to be thankful to God for the wonders of nature, and for the food they were about to receive (A. 128, 134).

4. The two theologians who testified in this cause both stated that the verse at issue was identical (except only the deletion of the word "God" in the last line) to prayers used by the Episcopal and Presbyterian Church for the instruction of their Sunday School classes and that the verse was, in their opinion, a prayer, despite the fact that the word "God" had been removed therefrom (A. 49, 50, 74, 75).

ARGUMENT

In their Petition, Petitioners have totally failed to show any reason why this Court should issue its Writ of Certiorari in this case. The decision of the U.S. Court of Appeals for the 7th Circuit, in the instant case, has not been shown to be in conflict with any decision of any other Circuit; the fundametnal issue presented by Petitions has already been decided by this Court on two occasions; the decision of the U.S. Court of Appeals in the instant case is not in conflict with prior pronouncements by this Court; and no claim has been made by Petitioners that the decision of the U.S. Court of Appeals for the 7th Circuit in the instant case has so drastically departed from the applicable decisions of this Court as to call for an exercise of this Court's power of supervision.

Further, Petitioners have consistently argued that the issues presented in the District Court and in the Court of Appeals for the 7th Circuit were *de minimis*, and can scarcely now be heard to argue that the questions presented are so unique, or of such significance as to warrant review by this Court.

I. THE ISSUES INVOLVED IN THIS CASE HAVE ALREADY BEEN DECIDED BY THIS COURT IN ENGLE v. VITALE, 370 U.S. 421 (1962) AND SCHOOL DISTRICT OF ABINGTON TP. PA. v. SCHEMPP, 274 U.S. 203, 83 S.Ct. 1560 (1963).

Since the Court of Appeals for the 7th Circuit has decided, in the instant case that the verse at issue had as its primary purpose the advancement of a religious prac-

tice, the Court of Appeals for the 7th Circuit placed the verse at issue squarely within the ambit of the *Abington* and *Engel* cases. Further review of the merits of those decisions would be both unecessary and unproductive.

II. THE PETITION DISCLOSES NO OTHER COMPELLING REASON FOR THE ISSUANCE OF A WRIT OF CERTIORARI.

All of the reasons advanced by Petitioners, when stripped of argumentation, relate to a contention that this Court should review the factual determination made by the U.S. Court of Appeals for the 7th Circuit that the evidence presented at the time of the trial of this cause compelled the conclusion that the verse in question constitute a proscribed religious activity. Since such a review is neither appropriate nor an acceptable basis for the issuance of a Writ of Certiorari, it is earnestly submitted that Petitioners' Petition should be denied.

Respectfully submitted,

RALPH JONAS
Attorney for Respondents